

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Investigation on the Commission's Own Motion into the Operations and Practices of Live Oaks Springs Water & Power Company (U390W), and its Owner/Operator, Nazar B. Najor; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should not Petition the San Diego County Superior Court for a Receiver to Assume Possession and Operation of the Live Oaks Springs Water & Power Company pursuant to the California Public Utilities Code section 855. Other Named Respondents include City National Bank, Live Oak Holding, LLC, a Nevada Limited Liability Company; Matthew Semmer, Receiver for City National Bank.

Investigation 12-08-004  
(Filed August 2, 2012)

(Appendix A contains the list of respondents to this Investigation, as modified and corrected by Decision 13-03-010).

**MODIFIED PRESIDING OFFICER'S DECISION AUTHORIZING SUPERIOR COURT ACTION FOR APPOINTMENT OF A RECEIVER FOR LIVE OAK SPRINGS WATER COMPANY**

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**MODIFIED PRESIDING OFFICER'S DECISION SUPERIOR COURT  
ACTION FOR APPOINTMENT OF A RECEIVER FOR  
LIVE OAK SPRINGS WATER COMPANY**

**1. Summary**

This decision authorizes and directs the Commission's Legal Division to commence proceedings in the Superior Court of San Diego County for appointment of a receiver to take possession of and operate Live Oak Springs Water Company (Live Oak), pursuant to Public Utilities Code Section 855.<sup>1</sup> Upon the Superior Court's appointment of a receiver for Live Oak, the receiver shall expeditiously obtain the services of a licensed land surveyor to prepare and record in the San Diego Recorder's Office a record of survey delineating Live Oak water utility real property. This decision also voids the collateralization of Live Oak public utility property used to collateralize a loan between Live Oak Holding, LLC and 1<sup>st</sup> Pacific Bank of California.

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<sup>1</sup> Public Utilities Code Section 855 provides that whenever the commission determines, after notice and hearing, that any water or sewer system corporation is unable or unwilling to adequately serve its ratepayers or has been actually or effectively abandoned by its owners, or is unresponsive to the rules or orders of the commission, the commission may petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of a receiver to assume possession of its property and to operate its system upon such terms and conditions as the court shall prescribe. The court shall provide for disposition of the facilities and system in like manner as any other receivership proceeding in this state.

## 2. Procedural Background

Live Oak Springs Water Company (Live Oak) is a Class D water utility providing public utility water service to 95 customers in the unincorporated community of Boulevard in southeastern San Diego County.<sup>2</sup>

This investigation into the operations and practices of Live Oak was opened in response to a foreclosure proceeding in Superior Court of San Diego County involving a \$1.5 million loan collateralized with Live Oak public utility assets.<sup>3</sup>

The assigned Commissioner's September 25, 2012 scoping memo and ruling identified seven issues to be addressed in this proceeding. These issues are:

- (1) Identification of the owners of Live Oak and determination of whether its owners and manager are fit to continue owning and operating the public utility or whether a receiver should be appointed to assume operations until a responsible owner can be found to assume operations of the public utility, pursuant to Section 855 of the Public Utilities Code;<sup>4</sup>
- (2) Whether a \$1.5 million loan instrument is void or valid with regard to the assets and collateral of Live Oak;

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<sup>2</sup> Exhibit 18 of Exhibit 2.

<sup>3</sup> *City National Bank v. Live Oak Holding, LLC*, et al. (Live Oak Holding Judicial Foreclosure Action) Superior Court of California, County of San Diego East County Division Case No. 37-2012-00065199-CU-MC-EC.

<sup>4</sup> All statutory references are to the Public Utilities Code unless otherwise stated.

- (3) Identification of actions that Receiver Semmer<sup>5</sup> and/or City National Bank (CNB) took regarding Live Oak and appropriateness of such actions;
- (4) Whether Receiver Semmer and/or CNB, either de facto or de jure, became an owner or operator of the public utility;
- (5) Whether any of the named respondents should be dismissed from this proceeding or additional respondents should be added;
- (6) If violations are found, whether Live Oak should be fined pursuant to Section 2107 and 2108; and,
- (7) If violations are found whether, and to what extent, other remedies should be imposed.

The third and fourth issues, as they relate to Receiver Semmer and the fifth issue were resolved by Decision (D.) 12-03-010. The remaining issues are addressed in this decision.

This proceeding was submitted on March 18, 2013 upon the receipt of reply briefs. New testimony introduced in opening and reply briefs was not considered, consistent with the Presiding Officer's January 11, 2013 ruling at the conclusion of the evidentiary hearing. The last day for receipt of evidentiary testimony was January 11, 2013.

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<sup>5</sup> Receiver Semmer was identified in the Order Instituting Investigation as a receiver for City National Bank. However, it was subsequently clarified in an October 12, 2012 joint stipulation and by D.13-03-010 that Semmer was appointed receiver by the Superior Court of San Diego County and restricted to the control of Live Oak Holding, LLC. Semmer was dismissed as a respondent to this investigation.

### **3. Issue #1 - Ownership of Live Oak**

Section 851 prohibits a public utility from a selling, leasing, assigning, mortgaging, or encumbering public utility property without first having secured an order from the Commission. Section 825 voids all evidence of interest or ownership of a public utility that is issued without an order of the Commission authorizing the issue thereof. Since 1978, there have been several authorized and unauthorized changes in the ownership of Live Oak. A current ownership chart of Live Oak as approved by the Commission is attached as Appendix B to this decision.

#### **3.1. First Authorized Transfer**

On February 27, 1979, the Commission authorized Samuel Krauth and Eleanor Krauth to acquire ownership and to operate Live Oak Springs Water & Power Company (Live Oak's predecessor) from Live Oak Partners, effective March 29, 1979. This acquisition of ownership was part of a larger transaction involving a motel, lodge, bar, restaurant, and a substantial parcel of land.<sup>6</sup>

#### **3.2. Second Authorized Transfer**

In July of 1982, the Krauths transferred their ownership interest in Live Oak Springs Water & Power Company *without* Commission approval to Elia Najor, doing business as Live Oak Springs Management Corporation. In addition to the water utility, that transfer of ownership included a general store, restaurant, resort facilities and all other properties owned by Krauths at Live Oak Springs. In 1983 Elia Najor's attorney advised the Commission that an application for approval of the transfer would be filed.

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<sup>6</sup> See D.89999, dated February 27, 1979.

Elia Najor operated the water utility for eight years under the name of Live Oak before filing Application (A.) 90-10-058 with the Commission in 1990 seeking authority to acquire Live Oak Springs Water & Power Company from the Krauths.<sup>7</sup> Elia Najor's son Nazar Najor managed the water utility for six years prior to the filing of A.90-10-058.<sup>8</sup> That application described the water system to consist of: (a) 20 acres of land; (b) two wells; (c) a 20,000 gallon water storage facility; (d) two pumps; (e) 21,000 feet of water mains; (f) 138 services; (g) 94 meters; (h) six fire hydrants; (i) vehicles; and, (j) office equipment.<sup>9</sup> Although a hearing on this matter was concluded on June 28, 1991 it was submitted a year later on May 15, 1992 upon the receipt of additional information concerning title to the water system.<sup>10</sup>

The 1982 unauthorized transfer of ownership of the water utility, including all public utility rights and obligations of Live Oak was approved by the Commission, effective September 2, 1992.<sup>11</sup> Nazar Najor continued to manage the water utility.<sup>12</sup> However, the Commission's approval was subject to certain conditions. One of the conditions required Elia Najor to conduct and account for all water utility business under the name of Live Oak. Another condition,

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<sup>7</sup> Elia Najor's attorney and both Krauths were deceased at the time this application was filed with the Commission.

<sup>8</sup> Exhibit 20 of Exhibit 2 at 3.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> 45 CPUC 2d (1992), D.92-09-001 at 400.

<sup>11</sup> *Id.* at 401-402.

<sup>12</sup> *Id.* at 3.

apparently resulting from the receipt of information concerning title to the water system, required Elia Najor to “obtain the services of a licensed land surveyor to prepare and record in the San Diego County Recorder’s Office a record of survey delineating the boundaries [real property] of all water company operating property; applicant shall record such survey within 90 days after the effective date of the order of the order approving the transfer.”<sup>13</sup> However, this condition was not satisfied and remains outstanding.<sup>14</sup> Although public utility fixtures and equipment comingled with the other acquired business interests (general store, restaurant and resort facilities) were transferred to Live Oak, public utility real property remained comingled with the other business interests. Even though Nazar Najor managed the water utility for six years prior to the land survey requirement and continued to manage the water utility subsequent to the land survey requirement, he did not follow through on this requirement because “I had other businesses that I ran. I didn’t run that part of it.”<sup>15</sup>

### **3.3. Third Authorized Transfer**

On May 29, 2007, Elia Najor (93 years old and unable to run the water utility) filed A.07-05-032 for authority to sell and transfer ownership of Live Oak to Dan Najor, Ramsey Najor and Lauren Najor (sons and daughter-in-law) under the name of Live Oak Enterprises, LLC (Live Oak Enterprises).

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<sup>13</sup> Other conditions included the initiation of a system improvements project to bring the water utility into compliance with General Order 103, and receipt of Commission approval prior to adding new service connections.

<sup>14</sup> Reporter’s Transcript, Volume 2, at 181 lines 25 to 182 line 14.

<sup>15</sup> *Id.* at 182 lines 15-20.



Live Oak Enterprises, registered to do business in San Diego County as Live Oak, is a California limited liability company wholly-owned by Live Oak Holding, LLC (Live Oak Holding), a Nevada limited liability company.<sup>16</sup> Nazar Najor would continue to manage the water utility.<sup>17</sup>

The application described the proposed transfer of the water system to consist of: (a) two wells; (b) one pump; (c) two water storage facilities with a total capacity of 60,000 gallons; (d) 16,437 feet of water mains; (e) 96 meters; (f) six fire hydrants; (g) vehicles; and (h) office equipment.<sup>18</sup> Contrary to the transfer of 20 acres of land as part of the prior Commission-authorized change in ownership of the water utility there would be no transfer in ownership of land as part of this application.<sup>19</sup>

This uncontested application to sell and transfer ownership of Live Oak to Live Oak Enterprises, LLC (Dan Najor, Ramsey Najor and Lauren Najor) from Elia Najor doing business as Live Oak was approved by D.08-09-008 on September 4, 2008.

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<sup>16</sup> Exhibit F to a Motion of the Division of Water and Audits at 2, dated December 13, 2012 (Motion of DWA).

<sup>17</sup> Application 07-05-032 at 3 and 4.

<sup>18</sup> *Id.* at 2 and 3.

<sup>19</sup> *Id.* at 2.

### **3.4. Other Ownership Transfers of Live Oak**

The Division of Water and Audits (DWA) testified that the ownership and/or transfer of public utility assets of Live Oak have been transferred at least three times without Commission authorization in violation of Sections 818 and 851.<sup>20</sup>

The first unauthorized transfer identified by DWA occurred as early as 2001.<sup>21</sup> This unauthorized transfer related to the transfer of real property from Elia Najor doing business as Live Oak Springs Management Corporation to Live Oak Management Corporation.

The second unauthorized transfer identified by DWA occurred on July 5, 2006 when Live Oak Management transferred real property to Live Oak Holding by Corporation Quitclaim Deed, consisting of 22 Assessor Parcel Numbers (APNs).<sup>22</sup> Five of these APNs (APN 609-050-03, 609-050-06, 609-071-01, 609-086-03, and 609-090-07) were identified to be land parcels necessary to the public utility water operations.<sup>23</sup>

The third unauthorized transfer identified by DWA occurred between September 4, 2008 (date Commission authorized the three individuals to acquire Live Oak as Live Oak Enterprises) and December 19, 2008 (the date Live Oak Enterprises submitted a limited liability statement of information to the

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<sup>20</sup> Exhibit 2 at 22.

<sup>21</sup> *Id.*

<sup>22</sup> Exhibit 7 to October 12, 2012 Joint Stipulation of Fact and Procedural History (Joint Stipulation).

<sup>23</sup> Exhibit B at 1-2 to Motion of DWA and Late Filed Exhibit A.

California Secretary of State).<sup>24</sup> The partial change in ownership resulted in replacing Lauren Najor (one of three persons authorized by the Commission to acquire Live Oak pursuant to D.08-09-008) with her husband, Nazar Najor.

### **3.5. Discussion**

Pursuant to D.08-09-008, the current authorized owner of Live Oak is Live Oak Holding doing business in California as Live Oak Enterprises, a limited liability entity owned by partners Daniel B. Najor, Ramsey L. Najor, and Lauren P. Najor. Having identified the current ownership of Live Oak as recognized by the Commission, we address the unauthorized ownership transfers of Live Oak and public utility real property that we are aware of.

#### **3.5.1. Unauthorized Transfer of Ownership**

The most recently known change in ownership of Live Oak Enterprises took place in 2008 when Nazar Najor acquired Lauren Najor's (wife of Nazar) partnership share of Live Oak Enterprises, a violation of Section 854(a) which prohibits any person, whether or not organized under the laws of this state, shall acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the Commission.

A comparison of Live Oak Enterprises' August 15, 2008 California Secretary of State Statement of Information filing with its December 19, 2008 filing substantiates that Lauren Najor relinquished her ownership share to Nazar Najor.<sup>25</sup> A review of Live Oak Holding's 2006 through 2011 federal tax returns,

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<sup>24</sup> Exhibit H to Motion of DWAs.

<sup>25</sup> Exhibits I and J to Motion of DWA.

which shows that Lauren Najor's partnership interest ceased to exist in 2008 and Nazar Najor's partnership interest began corroborates that this change did take place without Commission authorization.<sup>26</sup> This unauthorized change in ownership is further confirmed by Nazar Najor, himself, in his testimony before the Superior Court of San Diego County on July 17, 2012. He testified that Live Oak is owned by himself and his two brothers, Daniel and Ramsey.<sup>27</sup> This unauthorized change in ownership of Live Oak is not currently recognized by the Commission.

The next unauthorized change in ownership occurred in 2007 when Live Oak Holding doing business in California as Live Oak Enterprises took control of Live Oak prematurely. Live Oak's 2007 Annual Report to the Commission, signed under penalty of perjury by Nazar Najor on May 13, 2008, identifies Live Oak Holding as doing business as Live Oak in 2007.<sup>28</sup> This occurred prior to the September 5, 2008 issuance of D.08-09-008 authorizing Live Oak Enterprises to acquire ownership of Live Oak.<sup>29</sup> This premature ownership of Live Oak is corroborated by a published fictitious business name statement of Live Oak Enterprises in the June 14, 21, 28 and July 5, 2007 issues of the Alpine Sun newspaper, which was filed in the Office of the Recorder/County

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<sup>26</sup> Sealed Exhibit 2.

<sup>27</sup> Exhibit 9 of Exhibit 1 at 8.

<sup>28</sup> Exhibit 14 of Exhibit 2 at 3.

<sup>29</sup> While Live Oak Holding is registered with the California Secretary of State to do business in California as Live Oak Enterprises, the application and commission decision makes no mention of Live Oak Holding owning Live Oak Enterprises. Daniel Najor, Ramsey Najor and Lauren Najor are the identified owners of Live Oak Enterprises.

Clerk of San Diego County.<sup>30</sup> That publication identifies June 4, 2007 as Live Oak Enterprises' first day of doing business under the name Live Oak, approximately fourteen months prior to Commission authorization. Live Oak Enterprises' registration to do business in San Diego County as Live Oak expired on June 4, 2012 and has not been renewed, as reported in the San Diego County's Assessor/Recorder/County Clerk web site [www.sdarcc.com](http://www.sdarcc.com) identifying fictitious names, of which official notice is taken.

Another unauthorized transfer of Live Oak ownership involves Live Oak Management Corporation prior to 2007 and subsequent to 1993.<sup>31</sup> A Live Oak Management Corporation April 3, 2003 State of California Statement of Information filing with the California Secretary of State identified Nazar Najor and Ramsey Najor as owners of Live Oak Management Corporation.<sup>32</sup> Specifically, a January 30, 2006 preliminary title report references a lien for unsecured property taxes filed by the tax collector of San Diego County in 2003 for Live Oak Management Corporation doing business as Live Oak Springs Water & Power.<sup>33</sup> Also, Live Oak's 2005 Annual Report, signed by Nazar Najor on February 10, 2006 under penalty of perjury, identifies Nazar Najor and Ramsey Najor as owners of Live Oak.<sup>34</sup> Nazar Najor subsequently confirmed in

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<sup>30</sup> Exhibit 5 of Exhibit 4.

<sup>31</sup> DWA identified two separate instances ownership changes involving Live Oak Management Corporation, one involving the transfer of Live Oak's real property and the other involving Live Oak operations.

<sup>32</sup> Exhibit L of Motion of DWA.

<sup>33</sup> Exhibit 25 of Exhibit 2 at 58.

<sup>34</sup> Exhibit 21 of Exhibit 2 at 4.

his November 30, 2012 testimony in Superior Court of San Diego that Live Oak was working under Live Oak Management Corporation.<sup>35</sup> However, Live Oak Management Corporation was suspended by the California State Franchise Tax Board on August 1, 2007, the suspension of which remains in effect.<sup>36</sup> In 2007 all the assets of Live Oak Springs Management Corporation were transferred into Live Oak Holding.<sup>37</sup>

The earliest unauthorized change in ownership of Live Oak occurred in 1993, shortly after D.92-09-001 was issued authorizing Elia Najor, doing business as Live Oak Springs Management Corporation,<sup>38</sup> to acquire ownership of Live Oak. An acceptance letter filed on February 10, 1993 in compliance with Ordering Paragraph 2 of that decision identified Elia Najor, Ramsey Najor and Nazar Najor as equal partners in Live Oak.<sup>39</sup> Approximately one year earlier, on December 13, 1991 Live Oak filed a fictitious business name statement with the San Diego County Recorder identifying Elia Najor and Nazar Najor doing business as Live Oak.<sup>40</sup>

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<sup>35</sup> Exhibit D at 11 of Motion of DWA.

<sup>36</sup> Exhibit O at 1 to Motion of DWA.

<sup>37</sup> Exhibit 24 of Exhibit 2 at 3.

<sup>38</sup> Live Oak *Springs* Management Corporation is not synonymous with Live Oak *Management* Corporation.

<sup>39</sup> Exhibit K to Motion of DWA.

<sup>40</sup> Exhibit K to Motion of DWA.

### **3.5.2. Unauthorized Transfer of Public Utility Real Property**

Nazar Najor contends that Live Oak has been providing public utility water service for the past 80 years without owning any real property and does not need any real property whatsoever to provide public utility water service.<sup>41</sup>

Nazar Najor represents that a 1943 blanket easement relieves the need for Live Oak to own any real property.<sup>42</sup> However, the evidence in this proceeding substantiates that Live Oak owned and should continue to own real property.

For example:

- Various unidentified real property parcels were transferred between the Krauths and Live Oak between April 2, 1979 and November 19, 1979.<sup>43</sup>
- The Krauths transferred title for Real Property Assessor's Parcel Number (APN) 606-050-03 back to Live Oak on November 19, 1979.<sup>44</sup>
- Twenty acres of land was identified as part of Live Oak in an October 23, 1990 filing of A.90-10-058 seeking authority for Elia Najor to acquire Live Oak.<sup>45</sup>
- Live Oak transferred title for APN 606-050-03 to Live Oak Management Corporation on May 22, 1991.<sup>46</sup>

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<sup>41</sup> Reporter's Transcript, Volume 1, at 124 lines 10-16, at 126 lines 13-17, at 127 lines 14-18, at 147 lines 18-20; and Reporter's Transcript, Volume 2, at 196 lines 7-12.

<sup>42</sup> Reporter's Transcript, Volume 2, at 246 lines 3-16.

<sup>43</sup> Exhibit 2 of Exhibit 4 at 1.

<sup>44</sup> *Id.*

<sup>45</sup> Exhibit 20 of Exhibit 2 at 3.

<sup>46</sup> Exhibit 2 of Exhibit 4 at 2.

- D.92-09-001 identified a two-acre parcel of land APN 609-050-03-00 as being a two-acre parcel of land part of the public utility water system.<sup>47</sup>
- A January 6, 2006 property appraisal identified property purchased in 1984, including APN 609-050-03-00, to be vested with Live Oak Management Corporation.<sup>48</sup>
- A Blanket Easement only provides an easement for installing a water distribution system and electrical transmission system in, upon or over all streets, road or highways.<sup>49</sup>

Prior to the Najor family members acquiring Live Oak, the Krauths acquired Live Oak in 1978 as part of a larger transaction involving a motel, lodge, bar, restaurant, and a substantial parcel of land.<sup>50</sup> Hence, the Live Oak public utility business was comingled with the other acquired business interests. Elia Najor acquired ownership of all the business interests of the Krauths at Live Oak Springs in 1982, including Live Oak without Commission authorization.

Elia Najor filed an application with the Commission in 1990, eight years later, to obtain Commission authorization to acquire Live Oak and to provide public utility water service. A Commission staff investigation of the public utility water operations discovered the non-public utility business interests that Elia Najor acquired from the Krauths were comingled with the public utility

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<sup>47</sup> 45 CPUC 2d, D.92-09-001 at 400.

<sup>48</sup> Exhibit 26 of Exhibit 2 at 5.

<sup>49</sup> Exhibit 25 of Exhibit 2 at 48.

<sup>50</sup> D.89999, dated February 27, 1979.



water operations. The Commission staff recommended and Elia Najor agreed to separate the public utility water operations from the other business interests acquired from the Krauths.<sup>51</sup> The Commission then ordered Elia Najor to obtain the services of a licensed land surveyor to prepare and record in the San Diego County's Recorder's Office a record of survey delineating the boundaries of all water company property.<sup>52</sup> This land survey requirement was apparently ordered to separate Live Oak operations from the other acquired business interests. However, the land survey and recording of the results in the San Diego County's Recorder's Office never took place.

### **3.5.3. Need to Appoint a Receiver**

Since 1982, when a Najor family member first acquired Live Oak without Commission authorization, ownership of Live Oak by various members of the Najor family have continually ignored and been unresponsive to the Commission's rules and orders, as detailed in the prior discussion of the ownership and public utility property of Live Oak.

Had Live Oak complied with the Commission's D.92-09-001 order to obtain the services of a licensed land surveyor to prepare and record a record of survey delineating the boundaries of all water company operating property, there would be no dispute on what property should be in the name of Live Oak. However, absent a land survey it is impossible to determine what real property should have been transferred to Live Oak as public utility property at the time

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<sup>51</sup> 45 CPUC 2d, D.92-09-001 at 401.

<sup>52</sup> *Id.*

Elia Najor acquired Live Oak from the Krauths and what real property should remain public utility water property.

The Najor family's inability to operate the public utility water utility is further demonstrated by a history of their non-compliance with the County of San Diego's Department of Environmental Health, Small Drinking Water System Division (DEH) environmental health permitting and water quality requirements. For example, DEH issued numerous Compliance Orders to Live Oak, five of which, dated September 19, 2011, October 9, 2009, June 3, 2009, December 8, 2005, and November 10, 2005, were received into evidence for violations of, or for, among other things, California's Safe Drinking Water Act, overdue water quality testing, expiration of required annual public health permit, and bacteriological total coliform violations.<sup>53</sup> Since May of 2012, Live Oak has and continues to provide public utility water service without a required environmental health permit.<sup>54</sup> There has also been repetitive late compliance of health and safety rules for lead and copper testing of drinking water, previously resulted in a 2009 violation for late compliance and is currently over-due.<sup>55</sup> Further, in 2007 Live Oak was found guilty of violating Penal Code Section 470(d) by submitting a falsified lab report to DEH.<sup>56</sup>

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<sup>53</sup> Exhibit 10.

<sup>54</sup> Exhibit 3 at 8.

<sup>55</sup> Reporter's Transcript, Volume 2, at 264 lines 22-25.

<sup>56</sup> Exhibit 3 at 8-9.

Live Oak's unresponsiveness to Commission rules and orders, inability to timely comply with DEH requirements, and falsification of lab reports puts the health and safety of Live Oak's public utility water customers at risk and substantiates Live Oak's inability to adequately serve its public utility water customers.

The sales and transfers of Live Oak and its real property, including public utility real property comingled with the other business interests of the Krauths acquired by Elia Najor and subsequently transferred to various non-public utility entities that took place without Commission authorization are null and void, pursuant to Section 851. The Commission should petition the Superior Court of San Diego County for the appointment of a receiver to assume possession of its property and to operate its system, Pursuant to Section 855. The appointed receiver should expeditiously obtain the services of a licensed land surveyor to prepare and record in the San Diego Recorder's Office a record of survey delineating Live Oak's real property.

#### **4. Issue # 2 - \$1.5 Million Loan Instrument**

Live Oak Holding and 1<sup>st</sup> Pacific Bank of California (1<sup>st</sup> Pacific) entered into a Business Loan Agreement on July 5, 2006 with a maturity date of July 5, 2009.<sup>57</sup> Pursuant to that Business Loan Agreement, 1<sup>st</sup> Pacific agreed to loan Live Oak Holding \$1.5 million (the Loan).

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<sup>57</sup> Two extensions of time were agreed to between Live Oak Holding and 1<sup>st</sup> Pacific. Effective July 5, 2009 the maturity date was extended to December 5, 2009 and effective December 5, 2009 the effective date was extended to April 5, 2010.

On July 5, 2006, Live Oak Holding also executed, delivered, and recorded a Deed of Trust to 1st Pacific for property commonly known as 37820 Old Highway 80, Boulevard, California (same address as Live Oak) as security for the Loan. The Deed of Trust identifies 22 APNs, five of which are identical to the APNs identified by Live Oak as having public utility water property and one of which is identical to the APN identified in D.92-09-001 as being part of the Live Oak water system.<sup>58</sup> The Deed of Trust also conveys and grants:

For valuable consideration, [Live Oak Holding] irrevocably grants, transfers, and assigns to [1<sup>st</sup> Pacific] in trust, with power of sale, for the benefit of [1<sup>st</sup> Pacific] as Beneficiary, all of [Live Oak Holding's] right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all assessments, right of way, and appurtenances; all water, water rights and ditch rights including stock in utilities with ditch or irrigation rights; and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters (the real Property) located in San Diego County, State of California.

The Business Loan Agreement identified Live Oak Holding as a limited liability company organized under the laws of Nevada and identifies Live Oak Enterprises LLC, also organized under the laws of Nevada, as the only other assumed business name used by Live Oak Holding. Although Live Oak Enterprises is qualified to do business in California as a Nevada (foreign) entity,

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<sup>58</sup> See Late Filed Exhibit A, Exhibit 4 of Joint Stipulation and D.92-09-001 (45 CPUC 2d at 400).

a review of the Nevada Secretary of State web site at [www.nvsos.gov/sosentitysearch](http://www.nvsos.gov/sosentitysearch) has no record of a Live Oak Enterprises limited liability entity (of which official notice is taken). Four guarantors are identified in the Business Loan Agreement: Daniel B. Najor, Nazar E. Najor, Ramsey Najor, and Live Oak Management Corporation, each of which executed a commercial guarantee.<sup>59</sup> Live Oak Management Corporation's commercial guarantee was signed by Nazar Najor and Ramsey Najor. Live Oak Management Corporation also granted real property with the same 22 APNs referenced in the Deed of Trust to Live Oak Holding via a Corporation Quitclaim Deed.<sup>60</sup>

In conjunction with the Loan, Live Oak Holding executed and delivered an Assignment of Rents that was recorded in the official records of the San Diego County Recorder's Office. Pursuant to the Assignment of Rents, upon default the Bank has the right to have a receiver appointed to take possession of the Property with the power to protect and preserve the Property, operate the Property preceding foreclosure or sale, and to collect rents from the Property and apply the proceeds against the amounts due to the Bank.<sup>61</sup>

On May 7, 2010, 1<sup>st</sup> Pacific was closed by the California Department of Financial Institutions, and the Federal Deposit Insurance Corporation (FDIC) was named receiver.

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<sup>59</sup> Exhibit 5 of Joint Stipulation.

<sup>60</sup> Exhibit 7 of Joint Stipulation.

<sup>61</sup> Exhibit 6 of Joint Stipulation.

#### **4.1. City National Bank**

CNB acquired certain assets of 1<sup>st</sup> Pacific from the FDIC on the same date that the FDIC was named receiver. The assets acquired included the Loan and CNB succeeded to all of 1<sup>st</sup> Pacific's rights, title and interest under the Loan. On July 16, 2010, CNB sent a letter of agreement to Live Oak Holding, Live Oak Enterprises, Live Oak Management Corporation, Daniel Najor, Nazar Najor, and Ramsey Najor proposing to forebear from instituting collection efforts on the Loan in exchange for a general release and other consideration from Live Oak Holding. On August 24, 2010, Live Oak Holding and guarantors executed the Forbearance Agreement. Live Oak Holding has defaulted and on February 17, 2011, CNB served and recorded a Notice of Default and Election to Sell under Deed of Trust, including the 22 parcels of land. As of October 5, 2012, the amount of unpaid principal and interest owed to CNB is \$1,889,256.28.<sup>62</sup> Fees, expenses, and interest continue to accrue.

#### **4.2. Division of Water and Audits**

The Division of Water and Audits (DWA) testified that Live Oak Holding owned Live Oak when the Loan was executed in July of 2006. DWA also testified that Live Oak Holding controlled real property used for public utility purposes and pledged it as collateral for the Loan. Although DWA acknowledges that these unauthorized transactions should be null and void pursuant to Sections 825 and 851, it recommends that the Commission not exercise its authority under those sections.<sup>63</sup> Instead, it recommends that the

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<sup>62</sup> Joint Stipulation at 8.

<sup>63</sup> Section 825, among other matters, voids all evidence of indebtedness issued without an order of the commission authorizing an issuance of indebtedness. Section 851

*Footnote continued on next page*

Commission find that the Loan and encumbrance of utility property are valid in this case due to the convoluted and complex history surrounding ownership of the water utility as chronicled in the Joint Stipulations, DWA's Motion to Amend the OII, and addressed in its prepared testimony (Exhibit 2).

DWA concludes that Live Oak Holding should be required to abide by the contractual terms that it agreed to in the Business Loan Agreements, Promissory Note, Deed of Trust, Commercial Guaranties, Change in Terms Agreements, Forbearance Agreement and all other documents executed in connection with the Loan by Live Oak Holding, Live Oak Management, Daniel Najor, Ramsey Najor, and Nazar Najor with 1<sup>st</sup> Pacific, and later CNB, between July 5, 2006 and August 24, 2010.

DWA also recommends that upon the sale of Live Oak to a new owner by a Commission nominated receiver, the proceeds of the sale of the utility's property (all water plant in-service assets and real property necessary to operate the utility) go to CNB as partial repayment for the Loan.<sup>64</sup>

#### **4.3. Discussion**

The Loan of 1<sup>st</sup> Pacific to Live Oak Holding originated on July 5, 2006, approximately fourteen months before the Commission authorized Live Oak Enterprises, an unregistered Nevada entity qualified to do business in California, to acquire Live Oak. Live Oak Holding is identified to be doing business in California by all parties to this investigation, even though Live Oak Enterprises'

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precludes a public utility from disposing of, or encumbering the whole or any part of public utility property necessary or useful in the performance of its duties to the public without first having secured an order from the commission.

<sup>64</sup> Exhibit 3 at 2.

application (A.07-05-032) to acquire ownership of Live Oak identified Daniel B. Najor, Ramsey Najor and Lauren Najor as owners of Live Oak Enterprises.

The Loan was collateralized by Daniel B. Najor, Nazar E. Najor, Ramsey Najor and Live Oak Management Corporation on the same date the Loan was issued. Included in the Loan collateralization were 22 APNs, some of which included real property known to have been previously owned by Live Oak and real property used for public utility purposes that were comingled with other business interests (general store, restaurant and resort facilities) without Commission authorization.

Although evidence identified in the prior unauthorized transfer of ownership discussion identifies Live Oak Holding as holding itself out to be doing business as Live Oak in 2007, it had no Commission authority to do so until September 4, 2008. Any transactions, including collateralization of real property, undertaken by Live Oak Holding involving public utility property prior to September 4, 2008 are null and void pursuant to Sections 825 and 851. DWA's request to find that the Loan and encumbrance of utility property are valid is denied.

CNB acquired the Loan from the FDIC due to the FDIC's closing of 1<sup>st</sup> Pacific. Since the Loan is null and void as it relates to public utility property, it is inappropriate to require the proceeds of any sale of Live Oak to go to CNB as partial repayment for the Loan, as recommended by DWA. However, it is appropriate for CNB to seek remedies against the guarantors to the extent that such remedies do not include public utility property acquired without Commission authorization.



**5. Issue # 3 - Actions Taken by City National Bank**

CNB became an interested party in the assets of Live Oak on May 7, 2010 when it acquired the rights, title, and interest of 1<sup>st</sup> Pacific's Loan to Live Oak Holding.<sup>65</sup> Actions taken by CNB since its acquisition of the Loan is summarized in Section 4.1 of this discussion. Issues regarding the Defaulted Loan are pending in Superior Court of San Diego County.

**6. Issue # 4 – Public Utility Involvement by City National Bank**

While CNB seeks to collect on the Loan by obtaining a judgment from Superior Court enforcing the guarantees against the Guarantors, CNB is merely the plaintiff in the judicial foreclosure action. CNB has not taken possession, custody or control of Live Oak.<sup>66</sup> CNB was not and is not an owner or operator of Live Oak public utility property.

**7. Issue # 6 and # 7– Penalties, Fines, Other Remedies**

DWA recommends that the Commission impose penalties and fines in excess of \$1 million on Live Oak Holding and all of the individuals responsible for violations of Public Utilities Code sections and other Commission requirements, as detailed in Attachment A of its reply brief.

Pursuant to Section 2107, any public utility which violates or fails to comply with any part of an order, decision, decree, rule, direction, demand, or requirement of the Commission is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each

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<sup>65</sup> Joint Stipulations at 7.

<sup>66</sup> Exhibit 1 at 6.

offense. For every violation of any part of any order, decision, decree, rule, direction, demand, or requirement of the Commission by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense, pursuant to Section 2108.

D.98-12-075 set forth five factors to be considered in assessing a penalty. Those factors involve an analysis of: 1) the severity of offense; 2) the conduct of the utility; 3) the financial resources of the utility; 4) the totality of circumstances; and 5) the role of precedent.<sup>67</sup>

The record regarding the severity of the offenses, conduct of the utility, and totality of circumstances would support a substantial penalty. However, it is difficult to justify a penalty absent an evidentiary hearing to provide each individual entity and person an opportunity to justify why they should not be assessed fines and penalties, and based on the financial resources factor. The loss of ownership of Live Oak far outweighs the holding of additional evidentiary hearings to determine the appropriateness of assessing fines and penalties and is in the public interest. The appropriate remedy in this instance is the assignment of a receiver. A penalty should not be assessed at this time.

## **8. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Michael J. Galvin is the assigned Administrative Law Judge (ALJ) in this proceeding. ALJ Galvin was designated the presiding officer for this proceeding in the September 25, 2012 Assigned Commissioner's Scoping Memo and Ruling.

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<sup>67</sup> CPUC 2d, 154 at 182-185.

## **9. Appeal and Review of Presiding Officer's Decision**

The presiding officer's proposed decision was mailed to the parties, listed in Appendix C, in accordance with Section 311 and Rule 14.2 of the Commission's Rules of Practice and Procedure. Appeal and review of the presiding officer's decision was permitted pursuant to Rule 14.4 of the Commission's Rules of Practice and Procedure.

An appeal of the presiding officer's proposed decision was timely filed by respondents Nazar Najor, Daniel Najor, Ramsey Najor, Lauren Najor, Live Oak Springs Water Company, Live Oak Holding, LLC. and Live Oak Enterprises, LLC. Appeals were also filed by City National Bank and the Division of Water and Audits. Upon review and consideration of these appeals, clarifying language was added to Conclusions of Law 3 and 4 and Ordering Paragraphs 1 and 5. There were no substantive changes to the presiding officer's proposed decision.

### **Findings of Fact**

1. Live Oak is a Class D water utility providing public utility water service.
2. The Krauths were authorized to acquire ownership of Live Oak Springs Water & Power Company as part of a larger transaction involving a motel, lodge, bar, restaurant, and a substantial portion of land in 1979.
3. Elia Najor acquired the public utility owned by the Krauths in 1982 without Commission authorization as part of a larger transaction involving a general store, restaurant, resort facilities and all other properties owned by the Krauths at Live Oak Springs.
4. Nazar Najor has managed Live Oak since 1984.

5. Elia Najor obtained Commission authorization to acquire Live Oak Springs Water & Power Company in 1992 and was required to separate public utility water operations under the name Live Oak Springs Water Company from the other businesses he acquired as part of the purchase.

6. Elia Najor's application to acquire Live Oak described the water system to include 20 acres of land.

7. D.92-09-001 required Live Oak to obtain the services of a licensed land surveyor to prepare and record in the San Diego County Recorder's Office a record of the survey delineating the boundaries [real property] of all water company operating property.

8. Live Oak has not undertaken a land survey of its public utility property.

9. D.08-09-008 authorized Live Oak Enterprises to acquire Live Oak in 2008.

10. California Secretary of State Statement of Information filings of Live Oak Enterprises identified a 2008 change in the ownership of its parent entity, Live Oak Holding.

11. Live Oak Holding's federal tax returns identified a change in the ownership of Live Oak Holding, doing business as Live Oak Enterprises in California occurred in 2008.

12. Nazar Najor testified in Superior Court of San Diego County in 2012 that Live Oak is owned by himself, and his two brothers, Daniel and Ramsey.

13. Live Oak's 2007 Annual Report to the Commission identified Live Oak Holding as doing business as Live Oak in 2007.

14. Live Oak Enterprises filed a fictitious business name statement with the County of San Diego on June 4, 2007.

15. Live Oak Enterprises published a fictitious business name statement in June and July of 2007 identifying its first day of doing business under the name of Live Oak as June 4, 2012.

16. Live Oak Enterprises registration to do business in San Diego County as Live Oak expired on June 4, 2012.

17. Nazar Najor and Ramsey Najor are identified as owners of Live Oak Management Corporation.

18. A January 30, 2006 preliminary title report references a lien for unsecured property taxes billed by the San Diego County tax collector in 2003 for Live Oak Management Corporation doing business as Live Oak Springs Water & Power Company.

19. Live Oak's 2005 Annual Report to the Commission identifies Nazar Najor and Ramsey Najor as owners of Live Oak.

20. Live Oak Management Corporation was suspended by the California State Franchise Tax Board in 2007, the suspension which remains in effect.

21. All the assets of Live Oak Springs Management Corporation were transferred to Live Oak Holding in 2007.

22. An acceptance letter, filed on February 10, 1993, identified Elia Najor, Ramsey Najor and Nazar Najor as equal partners in Live Oak.

23. A December 13, 1991 Live Oak fictitious business name statement with the San Diego County Recorder identified Elia Najor and Nazar Najor doing business as Live Oak.

24. Various real property parcels were transferred between the Krauths and Live Oak between April 2, 1979 and November 19, 1979.

25. The Krauths transferred title for Real Property APN 606-050-03 back to Live Oak on November 19, 1979.
26. Twenty acres of land was identified as part of Live Oak in an October 23, 1990 filing of A.90-10-058.
27. Live Oak transferred title for APN 606-050-03 to Live Oak Management Corporation on May 22, 1991.
28. Decision 92-09-001 identified a two-acre parcel of land, APN 609-050-03-00 as being part of Live Oak.
29. A January 6, 2006 property appraisal identified property purchased in 1984, including APN 609-050-03-00, to be vested with Live Oak Management Corporation.
30. Live Oak's blanket easement only provides an easement for installing a water distribution system and electrical transmission system in, upon or over all streets, road or highways.
31. Live Oak has a history of non-compliance with DEH environmental health permitting and water quality requirements.
32. Live Oak has and continues to provide public utility water service without a required environmental health permit.
33. Live Oak submitted a falsified lab report to DEH in 2007.
34. Live Oak Holding entered into a Business Loan Agreement for \$1.5 million with 1<sup>st</sup> Pacific on July 5, 2006.
35. Live Oak Holding executed a Deed of trust to 1<sup>st</sup> Pacific on July 5, 2006, for property commonly known as 37820 Old Highway 80, Boulevard, California as security for the Loan, same address as Live Oak.

36. The Deed of Trust identifies 22 APNs, five of which are identical to the APNs identified by Live Oak as having public utility water property and one of which is identical to the APN identified in D.92-09-001 as being part of the Live Oak water system.

37. Four guarantors are identified in the 1<sup>st</sup> Pacific Business Loan Agreement: Daniel B. Najor, Nazar E. Najor, Ramsey Najor, and Live Oak Management Corporation.

38. Live Oak Management Corporation's guarantee was signed by Nazar Najor and Ramsey Najor.

39. Live Oak Management Corporation also granted real property with the same 22 APNs referenced in the Deed of Trust to Live Oak Holding.

40. 1<sup>st</sup> Pacific was closed by the California Department of Financial Institutions on May 7, 2010, and the FDIC was named receiver.

41. CNB acquired certain Live Oak Holding's loan to 1<sup>st</sup> Pacific from the FDIC on the same date that the FDIC was named receiver.

42. Live Oak Holding defaulted on the loan on February 17, 2011.

43. CNB served and recorded a Notice of Default and Election to Sell under Deed of Trust, including the 22 parcels of land.

44. As of October 5, 2012, the amount of unpaid principal and interest owed to City National Bank is \$1,889,256.28.<sup>68</sup> Fees, expenses, and interest continue to accrue.

45. The Nevada Secretary of State has no record of a Live Oak Enterprises limited liability entity.

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<sup>68</sup> Joint Stipulation at 8.

46. The collateralization of the Loan included 22 APNs, some of which included real property known to have been previously owned by Live Oak and real property used for public utility purposes that were comingled with other business interests without Commission authorization.

### **Conclusions of Law**

1. A receiver should be appointed to protect the health and safety of Live Oak customers due to Live Oak's unresponsiveness to Commission rules and order, inability to timely comply with DEH requirements, and falsification of lab reports.

2. An appointed receiver should expeditiously obtain the services of a licensed land surveyor to prepare and record in the San Diego Recorder's Office a record of survey delineating Live Oak's real property including public utility real property comingled with non-related business interests.

3. The collateralization of real property by Live Oak Holding involving public utility property prior to September 4, 2008 is null and void pursuant to Sections 825 and 851.

4. The appropriate remedy in this instance is to obtain a new owner of Live Oak.

5. Official notice should be taken of the San Diego County's Assessor/Recorder/County Clerk web site [www.sdarcc.com](http://www.sdarcc.com) identifying fictitious names, and showing that Live Oak Enterprises registration to do business in San Diego County as Live Oak expired on June 4, 2012 and has not been renewed.

6. Official notice should be taken of the Nevada Secretary of State web site at [www.nvsos.gov/sosentitysearch](http://www.nvsos.gov/sosentitysearch) which has no record of a Live Oak Enterprises limited liability entity.



**O R D E R****IT IS ORDERED** that:

1. The Commission takes official notice of the San Diego County's Assessor/Recorder/County Clerk web site [www.sdarcc.com](http://www.sdarcc.com) identifying fictitious names, and showing that Live Oak Enterprises registration to do business in San Diego County as Live Oak Springs Water Company expired on June 4, 2012 and has not been renewed.
2. The Commission takes official notice of the Nevada Secretary of State web site at [www.nvsos.gov/sosentitysearch](http://www.nvsos.gov/sosentitysearch), which has no record of a Live Oak Enterprises limited liability entity.
3. The Commission's Legal Division shall file immediately with the Superior Court of San Diego County a petition for appointment of a receiver to assume possession of and operation of the water system of Live Oak Springs Water Company.
4. A receiver appointed by the Superior Court of San Diego shall expeditiously obtain the services of a licensed land surveyor to prepare and record in the San Diego County Recorder's Office a record of survey delineating Live Oak Springs Water Company (Live Oak) water utility real property, including public utility real property comingled with the non-public utility business interests of the prior owners of Live Oak and subsequently transferred to various non-public utility entities, that took place without Commission authorization.

5. The July 5, 2006 Loan instrument between Live Oak Holding, LLC and 1<sup>st</sup> Pacific Bank of California (predecessor of City National Bank) is void solely with regard to property necessary for the operation of Live Oak Springs Water Company (Live Oak) to be determined by a receiver appointed by the Superior Court of San Diego and identified in a survey to be completed by a licensed land surveyor. Under no circumstances may City National Bank seek repayment of the loan from future revenue derived from Live Oak's ratepayers.

6. Investigation 12-08-004 is closed.

This order is effective immediately.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX A**  
**NAMED RESPONDENTS**  
**AS MODIFIED BY DECISION 13-03-010**

**ENTITY RESPONDENTS**

City National Bank

Live Oak Enterprises, LLC

Live Oak Holding, LLC

Live Oak Management Company

Live Oak Springs Water Company

**INDIVIDUAL RESPONDENTS**

Nazar E. Najor

Daniel B. Najor

Ramsey Najor

Lauren Najor

**(END OF APPENDIX A)**

**APPENDIX B**  
**CURRENT OWNERSHIP CHART OF**  
**LIVE OAK SPRINGS WATER COMPANY**



**(END OF APPENDIX B)**

**APPENDIX C**  
**\*\*\*\*\* SERVICE LIST \*\*\*\*\***  
**Last Updated on 14-MAY-2013 by: JVG**  
**I1208004 LIST**

**\*\*\*\*\* PARTIES \*\*\*\*\***

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LLC.

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**\*\*\*\*\* STATE EMPLOYEE \*\*\*\*\***

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**APPENDIX C**  
**\*\*\*\*\* SERVICE LIST \*\*\*\*\***  
**Last Updated on 14-MAY-2013 by: JVG**  
**I1208004 LIST**

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**(END OF APPENDIX C)**